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Acting United States Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re:	)	Case No. 11-10912-A-11
	)	Chapter 11
JAMIE THOMAS and	)	DC No. KB-1
JAMES EDWIN THOMAS)	
	)	Date: hearing requested
	)	Time:
	)	Place: U.S. Bankruptcy Court
	)	Department A
	)	1300 18 th Street
	)	Bakersfield, California
Debtors.	)	Judge: Whitney Rimel

**UNITED STATES TRUSTEE'S OBJECTION TO AMENDED EX PARTE
APPLICATION TO EMPLOY COUNSEL FOR DEBTOR IN POSSESSION**

TO THE HONORABLE WHITNEY RIMEL,
UNITED STATES BANKRUPTCY JUDGE:

August B. Landis, Acting United States Trustee, files this objection to the Amended Ex Parte Application to Employ Counsel for Debtors in Possession ("Amended Employment Application"), Kirk Brennan, as follows:

1. The United States Trustee has remaining concerns regarding the Amended Employment Application. On February 17, 2011, the United States Trustee e-mailed Mr. Brennan with a list of these concerns. Mr. Brennan e-mailed his reply to these concerns on

1 February 18, 2011.

2 2. The United States Trustee sought clarification regarding what happened to the
3 \$2,300 for “chapter 13 bankruptcy services,” especially in light of the fact that no chapter 13
4 was filed on behalf of the Debtors. In Mr. Brennan’s e-mail response, he indicated the funds
5 were not returned to the Debtors. This may result in a conflict of interest if Mr. Brennan is
6 found to be associated with Prosper Law, as the Debtor may have a claim against Prosper Law
7 pursuant to 11 U.S.C. § 329.

8 3. The United States Trustee sought clarification on the extent of Mr. Brennan’s
9 association with Prosper Law. The United States Trustee specifically asked the following
10 questions:

- 11 a. Are you an employee, officer, director, shareholder, or
12 manager of Prosper Law?
13 b. Do you and Prosper Law share office space, legal staff, etc?
14 c. Are there any fee splitting agreements?
15 d. Are there any written agreements or contracts between you
16 and Prosper Law?

17 These questions were not specifically addressed in Mr. Brennan’s e-mail response. Rather,
18 Mr. Brennan indicated he believed he was “associated with Prosper Law within the meaning
19 of the Disclosure of Compensation of Attorney form.” Mr. Brennan explained that he
20 conducts all his business under “California Law Office, P.C.” but then goes on to say that he
21 does this because it is required by his malpractice insurance, otherwise “I would probably file
22 cases such as this one under Prosper Law.” This last comment, combined with Mr. Brennan’s
23 failure to specifically address the above questions, raises serious concerns about Mr.
24 Brennan’s relationship with Prosper Law and his disinterestedness.

25 4. The United States Trustee sought clarification on Mr. Brennan’s intended use of
26 bankruptcy practitioners as mentors during the pendency of this case. This is not disclosed in
27 the employment application, and Mr. Brennan did not indicate what the financial impact
28 would be to the Debtors, if any. Mr. Brennan adequately disclosed this issue in this e-mail

1 response, however the United States Trustee believes this information should be included in
2 either an amended application or a supplemental declaration.

3 5. The United States Trustee has requested that Mr. Brennan amend the Form 2016(b)
4 (disclosure of attorney compensation) to disclose that he received the \$2,500 retainer from
5 Prosper Law and not the Debtors. Mr. Brennan indicated in his e-mail response that he will
6 make the appropriate changes.

7 WHEREFORE, the United States Trustee respectfully submits that the Amended Ex
8 Parte Application To Employ Counsel for Debtor in Possession should not be approved.

9 DATED: February 23, 2011

10 Respectfully submitted,

11 Mark L. Pope
12 Assistant United States Trustee

13 By: /S/
14 Robin Tubesing

15 Attorney for August B. Landis,
16 Acting United States Trustee

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